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IN THE

Supreme Court of the United States

October Term, 1971

NO. 70-54

VICTORY CARRIERS, INC., SS SAGAMORE HILL and GULF STEVEDORE CORP., *Petitioners*

v.

BILL LAW, *Respondent*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE ON BEHALF OF THE NATIONAL MARITIME COMPENSATION COMMITTEE

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE ON BEHALF OF THE NATIONAL MARITIME COMPENSATION COMMITTEE

To The Honorable Judges Of Said Court:

All of the parties in this case have given their written consent to the filing of a brief as *amicus curiae* by the National Maritime Compensation Committee and such consent has been filed with the Clerk of the Court.

The National Maritime Compensation Committee respectfully moves the Court to grant it leave to file the accompanying brief as *amicus curiae* in support of the Petitioners after the time for the filing of such a brief under Rule 42 of this Court has expired, and as grounds therefor would respectfully show:

1.

The question presented to the Court in this case is one of first impression. Since the decision of the Court of Appeals below involves an unprecedented landward extension of a shipowner's warranty of the seaworthiness of its vessel to a stevedore's shore based equipment being used entirely ashore, it is one of almost unlimited importance and significance to the maritime industry of this country.

2.

The National Maritime Compensation Committee is a nationwide organization whose membership is composed of representatives of seventeen maritime associations from substantially all of the maritime centers in the United States.[1] The membership of these associations include substantially all types of employers who furnish shore based employees and shore based equipment to perform

1. These are: Boston Shipping Association, Inc., Great Lakes Terminal Association, Hampton Roads Maritime Association, Inc., Lake Carriers Association, Master Contracting Stevedores Association of the Pacific Coast, Inc., Mobile Steamship Association, Inc., National Association of Stevedores, New Orleans Steamship Association, New York Shipping Association, Inc., North Atlantic Ports Association, Pensacola Steamship Association, Philadelphia Marine Trade Association, Portland Shipping Association, Inc., Savannah Maritime Association, Steamship Trade Association of Baltimore, Inc., Tampa Steamship Association, and West Gulf Maritime Association.

services for shipowners while vessels are in port. The National Maritime Compensation Committee, therefore, is a particularly appropriate organization to file a brief *amicus curiae* in order that this Court might have the views of substantially all segments of the maritime industry in considering this important question of first impression.[2]

3.

The accompanying Brief Amicus Curiae for which leave to file is sought is not a reiteration or "rehash" of Petitioners' brief or arguments. Instead the Brief Amicus Curiae is directed to the following additional significant considerations which this Court should carefully weigh and evaluate in making its decision in this case:

1. In *Sieracki*,[3] *Hawn*[4] and *Gutierrez*,[5] this Court held that the shipowner's warranty of the seaworthiness of its vessel is to be extended to a particular longshoreman only

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2. In one other case involving an equally important issue to the maritime industry as a whole, the National Maritime Compensation Committee filed a Brief Amicus Curiae to acquaint the Court with the views of its members with respect to the problems involved. See *Nacirema Operating Co. v. Johnson*, 396 U.S. 212, 24 L.Ed.2d 371, 90 S.Ct. 347 (1969), reh. den. 397 U.S. 929, 25 L.Ed.2d 109, 90 S.Ct. 895, in which this Court held that longshoremen injured on the dock as an extension of the land were not entitled to recover under the Longshoremen's & Harbor Workers' Compensation Act, 33 U.S. C.A., §901 ff, but, just like every other shore based worker, only under the state workmen's compensation act.

3. *Seas Shipping Company, Inc. v. Sieracki*, 328 U.S. 85, 90 L.Ed. 1099, 66 S.Ct. 872 (1946).

4. *Pope & Talbot, Inc. v. Hawn*, 346 U.S. 406, 98 L.Ed. 143, 74 S.Ct. 202 (1953).

5. *Gutierrez v. Waterman Steamship Corp.*, 373 U.S. 206, 10 L.Ed.2d 297, 83 S.Ct. 1185, reh. den. 374 U.S. 858, 10 L.Ed.2d 1082, 83 S.Ct. 1863 (1963).

(1) if he is "doing a seaman's work", and (2) if he is "incurring a seaman's hazards." In extending the shipowner's warranty to the contract stevedore's forklift truck being used solely on the dock in this case and to a screw auger being used to discharge a cargo of grain from a railroad car into a grain elevator hopper on land two weeks later in its *Chagois* case,[6] the Court of Appeals below completely disregarded the most significant criteria —the longshoremen were not "incurring a seaman's hazards". These longshoremen were incurring precisely the same hazards any land locked worker faces who operates a forklift to move merchandise in a warehouse or who operates a screw auger to discharge a railroad car into a grain elevator far removed from any navigable waters. As these longshoremen were not incurring any seamen's hazards, it is respectfully submitted that the Court below failed to properly adhere to the criteria set down by this Court.[7]

2. In *Petterson*,[8] *Rogers*[9] and *Italia*,[10] this Court extended the shipowner's warranty of the seaworthiness of its vessel to gear furnished by a stevedore (1) which was

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6. *Chagois v. Lykes Bros. Steamship Co., Inc.*, 5 Cir. 1970, 432 F.2d 388, petition for writ of certiorari pending as No. 70-64, October Term, 1971, *Lykes Bros. Steamship Co., Inc., Petitioner v. Joseph Chagois, Respondent.*

7. See full discussion, Brief Amicus Curiae, pages 5 to 12.

8. *Alaska Steamship Company, Inc. v. Petterson*, 347 U.S. 396, 98 L.Ed. 798, 74 S.Ct. 601 (1954), affirming 205 F.2d 478 (9 Cir. 1953).

9. *Rogers v. United States Lines*, 347 U.S. 984, 98 L.Ed. 1120, 74 S.Ct. 849 (1954), reversing 205 F.2d 57 (3 Cir. 1953).

10. *Italia Societa Per Azioni di Navegazione v. Oregon Stevedoring Company, Inc.*, 376 U.S. 315, 11 L.Ed.2d 732, 84 S.Ct. 748 (1964).

seagoing cargo gear usually and customarily found aboard and furnished by a vessel and (2) which gear had been incorporated into and made a part of the ship's seagoing cargo gear aboard the vessel at the time of the accident. Thus all three cases involved longshoremen injured aboard a vessel while not only doing a seaman's work, but incurring a seaman's hazards as well. *Petterson, Rogers* and *Italia* do not sanction the landward extension of the shipowner's warranty in this case, and obviously could not, without completely rejecting the very basis on which this Court relied in *Sieracki, Hawn* and *Gutierrez* in making this liability without fault remedy available to certain shore based workers in the first place. It is respectfully submitted that the teachings of these cases need to be carefully considered in arriving at a disposition of the case presently before the Court.[11]

3. The attempted justification for the extension of the warranty to shore based equipment being used on land such as the forklift in the present case and the screw auger being used to discharge grain from a railroad car in the *Chagois* case is patently unsound and unrealistic. The justification asserted being that the shipowner is only momentarily liable and will not have to pay the damages for which it is allegedly liable because in most cases these damages will be paid for him by the stevedore through an indemnity action. The shore based hazards incurred by longshoremen on the dock from shore based equipment are no different from the same hazards incurred by other workers in completely landlocked operations far removed from any navigable waters. These landlocked workers have their workmen's compensation remedy against their

11. See full discussion, Brief Amicus Curiae, pages 12 to 14.

employer for these same shore based hazards. But by extending the shipowner's warranty ashore as the Court below has done, the stevedore is required to pay not only the same workmen's compensation benefits as the employer of a landlocked worker, but also must respond by paying the damages for which the shipowner is held liable only for a moment—a moment only long enough to require the stevedore to pay the damages. It is respectfully submitted the injustice being done by such a rule of law needs careful examination, consideration and analysis by this Court.[12]

4. Attempts to extend admiralty tort jurisdiction to accidents on land on the basis of an employee's "status" and not the "situs" of the accident have never been acceptable to this Court. *Nacirema Operating Co.* is this Court's most recent rejection of this "status" test[13] and it is respectfully submitted it should reject it again in this case.[14]

CONCLUSION

For the foregoing reasons, the National Maritime Compensation Committee respectfully submits that its Motion for

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12. See full discussion, Brief Amicus Curiae, pages 14 to 18.

13. *Nacirema Operating Co. v. Johnson*, 396 U.S. 212, 24 L.Ed. 2d 371, 90 S.Ct. 347 (1969); reh. den. 397 U.S. 929, 25 L.Ed.2d 109, 90 S.Ct. 895.

14. See full discussion, Brief Amicus Curiae, pages 19 to 20.

Leave to File Late its Brief Amicus Curiae should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that copies of the foregoing Motion have been served on counsel for all parties herein by depositing the same in a United States mail box with first class air mail postage prepaid, addressed to counsel of record at the following post office addresses on the 8th day of September, 1971.

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